(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2344 / 2005

Petitioner

Deepak Kumar
S/o Shri Govind Ram Agrawal
Age - 32
R/o Fafadih, Teh. & Distt. Raipur (C.G.)
Presently Resi. At Main Road
Samata Colony Raipur

VERSUS

Respondent

Shri Ram Kumar
S/o Shri Devi Shai Agrawal,
Proprietor – Kumar Enterprises,
Station Road, Raipur,
R/o H. No. 522, Behind Sheo Bag
Pandri, Raipur Teh. & Distt. Raipur (C.G.)

P.R. No. 2131/05
Presented by Shri Bajrang Gupta
dated 10-05-05

Assailing *Order Dated* ~~12~~/~~05~~/2005 *Passed By The Court of* X Additional District Judge,Raipur, *In. Civil Suit No.* 6-A/2004.

PETITION UNDER ART 227 OF THE CONSTITUTION

(84)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....WP.NO.2344..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	17-6-2005 Shri Raja Sharma, counsel for the petitioner. Heard on admission. The petitioner has preferred this writ petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 27-4-2005 passed by the 10th Additional District Judge, Raipur whereby learned Additional District Judge rejected the application filed by the plaintiff/petitioner herein for staying the proceeding of the Civil Suit No.6-A/2004. At the outset, learned counsel for the petitioner very frankly admitted that the case of the petitioner was not covered under Section 10 of the C.P.C. for staying the proceeding of the said suit. However, if the present suit is allowed to continue, then the multiplicity of the proceeding will arise. Moreover, the proceeding will be a futile exercise, therefore, learned trial Court ought to have stayed the Civil Suit till the disposal of the appeal pending before the High Court against the judgment and decree passed by the Additional District Judge in another suit. Moreover, if the appeal is decided by the High Court, then that will be helpful in decision of the present suit, therefore, learned Additional District Judge ought to have stayed the proceeding of the suit. Brief facts necessary for the disposal of this petition are that money decree was passed by the Additional District Judge, Raipur against the father of the petitioner herein and in execution of that decree the plot bearing No.8 and 9, Khasra No.542/9, area ad measuring 7500 sq.ft. which is the subject matter in both the suits before the A.D.J., Raipur was auctioned and that was purchased by son of the respondent herein	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....WP.No.2344.... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

namely Pavan Kumar. Being aggrieved by the auction, the petitioner herein preferred two civil suits one against Pavan Kumar in the year 1989 for declaration and prohibitory injunction and another suit was filed by the petitoner against the respondent who is the father of said Pavan Kumar for arrears of rent and eviction in the year 1985 on the ground that respondent is the tenant in the house of the petitioner. The later suit which was filed by the petitioner herein against Pavan Kumar came to be dismissed by the trial Court and it is informed that the appeal (F.A. No.57/05) is pending against the suit before this Court. Thereafter, the petitioner herein moved an application under Section 10 of the C.P.C. before the trial Court for staying the proceeding of the suit filed against the respondent earlier in time and that application came to be dismissed by the 10th Additional District Judge, Raipur holding that the matter is not covered under Section 10 of the C.P.C.. The present suit was filed prior to the other suit filed against Pavan Kumar which has already been decided.

If we look into above facts, the nature of both the suits is entirely different as the suit filed against Pavan Kumar was for declaration and injunction whereas, the present suit has been filed against respondent for arrears of rent and eviction on the ground that he is the tenant of the petitioner. Moreover, the present suit has been filed earlier in time and the parties are not same, therefore, in any case, the petitioner's case is not covered under Section 10 of the C.P.C.

Now, coming to the question that proceeding of this suit should be stayed till the decision of the appeal by this Court and ultimately, decision of this Court may be helpful in deciding the present suit. In my opinion, that cannot be a ground for staying the proceeding of the suit, particularly,

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when the subject matter of both the suits is entirely different. The other suit which has already been decided that has been filed for declaration and injunction whereas, the present suit is based purely on the relationship of landlord and tenant.

In the circumstances, I am of the opinion that the petitioner has failed to ~~prove~~ establish that the trial Court has exercised the jurisdiction with material irregularity; as such I do not find any reason to interfere with the impugned order. The writ petition is liable to be dismissed and it is accordingly dismissed.

Consequently, M.(W.)P. No.1897/2005 also stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Barve

(पीछे देखिये)